

## **Exhibit 40**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

STICHTING PENSIOENFONDS ABP,

Plaintiff,

v.

MERCK & CO., INC., RAYMOND V.  
GILMARTIN, JUDY C. LEWENT, ALISE S.  
REICIN, KENNETH C. FRAZIER, EDWARD  
M. SCOLNICK, DAVID W. ANSTICE, and  
PETER S. KIM

Defendants.

CASE NO. 2:05-CV-05060-SRC-MF

STIPULATION AND [PROPOSED] ORDER

WHEREAS, *In re Merck & Co., Inc., Securities, Derivative & "ERISA"*

*Litigation*, MDL No. 1658 (the "MDL"), is pending before this Court;

WHEREAS, the MDL includes a consolidated securities action, No. 2:05-CV-02367-SRC-MF (the "Consolidated Securities Action");

WHEREAS, the Plaintiffs in the Consolidated Securities Action filed their Corrected Consolidated and Fourth Amended Class Action Complaint (the "Consolidated Securities Complaint") on June 14, 2005;

WHEREAS, the Defendants in the Consolidated Securities Action moved to dismiss the Consolidated Securities Complaint on August 12, 2005;

WHEREAS, Plaintiff Stichting Pensioenfond ABP filed its Complaint (the "ABP Complaint") in *Stichting Pensioenfond ABP v. Merck & Co., Inc., et al.*, No. 2:05-CV-05060-SRC-MF (the "ABP Action"), on October 21, 2005;

WHEREAS, on December 29, 2005, the parties to the ABP Action entered into a stipulation, which this Court “so ordered” on December 28, 2005, postponing the deadline for Defendants in the ABP Action to respond to the ABP Complaint until after the resolution of the motion to dismiss the Consolidated Securities Complaint.

WHEREAS, on April 12, 2007, this Court dismissed the Consolidated Securities Complaint as time-barred;

WHEREAS, on May 9, 2007, the Plaintiffs in the Consolidated Securities Action appealed the dismissal of the Consolidated Securities Complaint to the United States Court of Appeals for the Third Circuit (the “Third Circuit Appeal”);

WHEREAS, the Third Circuit Appeal will be fully briefed by October 26, 2007;

WHEREAS, Defendants in the ABP Action moved to dismiss the ABP Complaint on August 3, 2007;

WHEREAS, in lieu of responding to Defendants’ motions to dismiss in the ABP Action, Plaintiff Stichting Pensioenfonds ABP filed an Amended Complaint on September 21, 2007 (the “Amended ABP Complaint”);

WHEREAS, the Amended ABP Complaint and the Consolidated Securities Complaint involve overlapping parties and allegations;

WHEREAS, the Court has reviewed the scheduling agreement below, as proposed and stipulated to by Counsel for Plaintiff Stichting Pensioenfonds ABP and Counsel for Defendants;

IT IS HEREBY STIPULATED AND AGREED by and between the parties, through their undersigned counsel, AND SO ORDERED, as follows:

1. The deadline for Defendants in the ABP Action to answer, move or otherwise respond to the Amended ABP Complaint shall be sixty (60) days from the date on which the Third Circuit issues a decision on the Third Circuit Appeal;

2. Plaintiff Stichting Pensioenfonds ABP shall serve its opposition to any motion(s) to dismiss no later than sixty (60) days from the date of filing of any motion(s) to dismiss;

3. Defendants in the ABP Action shall serve any reply memoranda in further support of any motion(s) to dismiss no later than forty-five (45) days from the date Plaintiff Stichting Pensioenfonds ABP files its opposition;

4. Nothing in this Stipulation and Order shall, or shall be asserted by any party to, waive, prejudice or otherwise affect any position or argument of any party asserted in support of or in opposition to Defendants' response(s) to the Amended ABP Complaint.

DATED: October 9, 2007

AGREED TO BY:

**GRANT & EISENHOFER P.A.**

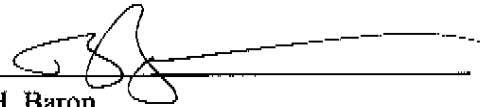
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*Counsel for Plaintiff Stichting Pensioenfonds  
ABP*

DATED: October 9, 2007

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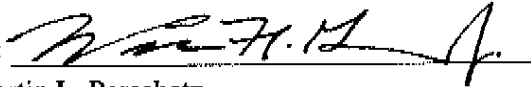
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and Peter Kim*

DATED: October 9, 2007


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*Counsel for Defendant Edward M. Scolnick*

SO ORDERED: 10/19, 2007

  
Hon. Stanley R. Chesler  
United States District Judge